

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

Jacqueline Landry

§

Plaintiff,

§

v.

§

CIVIL ACTION NO. _____

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**Dallas Independent School District
and Blue Cross and Blue Shield
Of Texas, A Division of Health
Care Service Corporation f/k/a
Health Care Service Corporation**

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Defendant.

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Plaintiff's Original Complaint

Plaintiff Jacqueline Landry ("Landry" or "Plaintiff") files this Original Complaint against Dallas Independent School District ("DISD") and Blue Cross and Blue Shield of Texas, A Division of Health Care Service Corporation f/k/a Health Care Service Corporation ("HCSC") (collectively referred to as "Defendants") and shows:

Parties

1. Plaintiff Jacqueline Landry is an individual citizen of Texas and a resident of Dallas County, Texas.
2. Defendant DISD is a school district doing business in Dallas County and may be served through serving the President of the Board of Trustees Eric Cowan or the Superintendent, Dr. Mike Miles, at Dallas Independent School District Administration Building, 3700 Ross Avenue, Dallas, Texas 75204-5491.
3. Defendant Blue Cross and Blue Shield of Texas, A Division of Health Care Service Corporation f/k/a Health Care Service Corporation is a corporation doing

business in Texas and may be served by serving its registered agent, Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

Summary of Claim

4. This lawsuit arises from the failure of Ms. Landry's former employer and the plan administrator to timely notify Ms. Landry of her rights to continue her insurance coverage under COBRA.

Venue and Jurisdiction

5. Venue is proper in Dallas County because all or a substantial part of the events or omissions establishing the claims occurred in Dallas County.

6. This Court has federal jurisdiction over the claims asserted under ERISA, 29 U.S.C. § 1132(e).

Factual Background

7. Ms. Landry worked for DISD for over 17 years in various capacities, including Division Executive/Operations Executive---Curriculum, Assistant Superintendent, Curriculum and School Improvement Support, and more recently, Executive Director, Professional Development Department. DISD offers a group health insurance plan to its employees. Ms. Landry was a participant in DISD's group health insurance plan.

8. In May 2012, Ms. Landry was notified the Professional Development department was abruptly moved from the Teaching and Learning division to the School Leadership division. The next day, Ms. Landry was notified her position was eliminated. Ms. Landry's final date of employment was August 31, 2012.

9. When Ms. Landry was terminated, she should have been sent a notification of her rights to continue her health insurance coverage on the DISD group plan for COBRA

purposes. Because her last day was August 31, 2012, Ms. Landry should have received her COBRA notification form by October 14, 2012 (44 days after her termination).

10. A COBRA notification letter was not prepared and mailed to Ms. Landry until December 22, 2012, over two months past the deadline.

Causes of Action

ERISA COBRA Notification Claim

11. Ms. Landry incorporates the preceding paragraphs as if fully restated.

12. At the termination of Ms. Landry's employment, DISD had statutory obligations to notify its plan administrator of her termination because that is a "qualifying event" to continue coverage under the group health insurance plan. 29 U.S.C. § 1166(a)(2) requires an employer of an employee under a group health plan to notify the administrator of qualifying events contained in 29 U.S.C. § 1163(1),(2), or (4) within 30 days of the qualifying event.

13. Under 29 U.S.C. § 1166(a)(4), an administrator of a group health plan is to notify any qualified beneficiary of the beneficiary's right to elect COBRA coverage. HCSC is the plan administrator for DISD's group health insurance plan. HCSC should have provided its notification to Ms. Landry no later than 14 days after receiving notice from DISD of the qualifying event. Ms. Landry should have received notice of her rights to select continued coverage under COBRA within, at the latest, 44 days after her termination.

14. DISD and HCSC did not timely provide the required notifications in violation of 29 U.S.C. § 1166.

15. Ms. Landry was terminated on August 31, 2012. DISD should have notified its plan administrator, HCSC, of Ms. Landry's qualifying event no later than September 30, 2012.

16. HCSC, the plan administrator, should have sent Ms. Landry a COBRA notification letter no later than October 14, 2012.

17. However, HCSC did not prepare and mail to Ms. Landry a COBRA notification letter until December 22, 2102. The letter Ms. Landry received erroneously listed her qualifying event date as October 1, 2012. A copy of the COBRA notification letter mailed to Ms. Landry is attached as Exhibit 1.

18. Ms. Landry was damaged by DISD's failure to comply with the COBRA notification requirement and seeks to recover those damages. These damages include medical expenses incurred by Ms. Landry in the months for which she did not have insurance coverage.

19. Under 29 U.S.C. § 1132(c) and 29 C.F.R. § 2575.502c-1, Ms. Landry also seeks to recover the statutory penalties of \$110 per day for the Defendants' failure to provide the notice required by 29 U.S.C. § 1166.

20. Ms. Landry also seeks to recover her reasonable attorney's fees and costs incurred in pursuit of this claim as allowed by 29 U.S.C. § 1132(g).

Jury Trial

21. Ms. Landry demands a trial by jury.

Prayer

WHEREFORE, Plaintiff Jacqueline Landry prays this Court enter a judgment declaring the acts and practices of Defendant violate the statutory requirements of

ERISA and award Plaintiff the relief sought and enter such other and further relief to which Plaintiff is just entitled.

Respectfully submitted,

/s/ Karen K. Fitzgerald
Karen K. Fitzgerald
State Bar No. 11656750
Kleiman Lawrence Baskind Fitzgerald LLP
8350 North Central Expressway, Suite 650
Dallas, Texas 75206
214.265.7400
214.265.7411 (Facsimile)
karen@klbf.com

Attorney for Plaintiff Jacqueline Landry

Exhibit 1

HEALTH CARE SERVICE CORPORATION
A Mutual Legal Reserve Company

T 000134

P.O. Box 1180
Marion, Illinois 62959-7680
1-888-541-7107

12/22/2012
847063383
0537TX
085000

JACQUELINE H LANDRY & Covered Dependents
2805 WOODMERE DR
DALLAS TX 75233-2719

Dear JACQUELINE H LANDRY



Enclosed is a packet of information advising you of your rights to continue health benefits under COBRA. Please read this material carefully. Once you have read and understood the material, you need to make a decision to continue the coverage or to waive your COBRA rights. This decision must be made within 60 days of the date of this letter or your COBRA effective date, whichever is later, or you will lose all rights to continuation coverage. If at any time during the 60 day election period you revoke your waiver of COBRA please contact Health Care Service Corporation for additional continuation coverage.

If you decide to elect COBRA continuation coverage, please complete the attached application and send it to the address listed on the form. This application also shows the premiums that will be billed to you monthly should you elect continuation coverage. You will have 45 days from the date of your first bill to make your initial premium payment. Once your timely payment is received and processed, your coverage will be reactivated retroactively to the date that you lost coverage through only the months that have been paid for in full. Therefore, you may choose to return the application with payment in lieu of waiting to receive your first bill. All future month's premiums will be due on the first of each month with a thirty day grace period for payment. Failure to meet the premium due dates will result in the termination of your continuation coverage.

If you decide not to elect continuation coverage you do not need to send anything back. If you have any questions, please contact the COBRA Department at 1-888-541-7107.

Sincerely,

HCSC ADMINISTRATION

WHEN WRITING, PLEASE FURNISH YOUR GROUP, IDENTIFICATION AND TELEPHONE NUMBERS WHERE YOU CAN BE REACHED FROM 7:30 A.M. TO 5:00 P.M.



HCSC COBRA APPLICATION 0537TX DALLAS ISD

T 000134

085000

EMPLOYEE NAME

Last, First M.I.

LANDRY

JACQUELINE

EMPLOYEE INFORMATION

Sex Date of Birth

H _____

ID

847063383

STREET ADDRESS

CITY/STATE

ZIP CODE

TELEPHONE NUMBER

EMAIL ADDRESS

APPLICANT INFORMATION

Last, First M.I.

Sex Date of Birth

ID

STREET ADDRESS

CITY/STATE

ZIP CODE

TELEPHONE NUMBER

EMAIL ADDRESS

RELATIONSHIP TO EMPLOYEE

ELIGIBLE COVERAGE
SUBSCRIBER

ACTIVE CARE 085000 9913

\$344.76

DEPENDENT INFORMATION

DEPENDENT NAME

RELATIONSHIP

COVERAGE

DOB

ID

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I UNDERSTAND THAT THE ABOVE INFORMATION IS THE BASIS FOR ISSUANCE OF MY
CONTINUED COVERAGE. I REALIZE THAT I WILL BE RESPONSIBLE FOR PAYING THE
REQUIRED MONTHLY PREMIUM.

SIGNATURE: _____

DATE: _____

PLEASE COMPLETE AND RETURN THIS FORM NO LATER THAN: 02/20/2013

MAIL IN THE ENCLOSED ENVELOPE TO:

HEALTH CARE SERVICE CORPORATION

P.O. BOX 1180

MARION, IL 62959-7680

QUALIFYING EVENT INFORMATION

(FOR OFFICE USE ONLY)

QUALIFYING EVENT/MAX COBRA TIME QUALIFYING EVENT DATE DATE MAILING NOTICE

LEFT EMPLOYMENT/18 months 10-01-2012 12-22-2012

COBRA END DATE OF COVERAGE COBRA EFFECTIVE DATE COVERAGE TERM DATE

04-01-2014 10-01-2012 10-01-2012



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